

FIRST REGULAR SESSION

SENATE BILL NO. 545

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time February 21, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2104S.011

AN ACT

To repeal section 537.762, RSMo, and to enact in lieu thereof one new section relating to product seller liability, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.762, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 537.762, to read as follows:

537.762. 1. [A defendant whose liability is based solely on his status as
2 a seller in the stream of commerce may be dismissed from a products liability
3 claim as provided in this section.

4 2. This section shall apply to any products liability claim in which another
5 defendant, including the manufacturer, is properly before the court and from
6 whom total recovery may be had for plaintiff's claim.

7 3. A defendant may move for dismissal under this section within the time
8 for filing an answer or other responsive pleading unless permitted by the court
9 at a later time for good cause shown. The motion shall be accompanied by an
10 affidavit which shall be made under oath and shall state that the defendant is
11 aware of no facts or circumstances upon which a verdict might be reached against
12 him, other than his status as a seller in the stream of commerce.

13 4. The parties shall have sixty days in which to conduct discovery on the
14 issues raised in the motion and affidavit. The court for good cause shown, may
15 extend the time for discovery, and may enter a protective order pursuant to the
16 rules of civil procedure regarding the scope of discovery on other issues.

17 5. Any party may move for a hearing on a motion to dismiss under this
18 section. If the requirements of subsections 2 and 3 of this section are met, and
19 no party comes forward at such a hearing with evidence of facts which would

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 render the defendant seeking dismissal under this section liable on some basis
21 other than his status as a seller in the stream of commerce, the court shall
22 dismiss without prejudice the claim as to that defendant.

23 6. No order of dismissal under this section shall operate to divest a court
24 of venue or jurisdiction otherwise proper at the time the action was commenced.
25 A defendant dismissed pursuant to this section shall be considered to remain a
26 party to such action only for such purposes.

27 7. An order of dismissal under this section shall be interlocutory until
28 final disposition of plaintiff's claim by settlement or judgment and may be set
29 aside for good cause shown at anytime prior to such disposition.] **No claim of**
30 **liability may be commenced or maintained against a product seller**
31 **under any legal theory, unless the product seller:**

32 **(1) Manufactured, produced, or designed the product; or**

33 **(2) Altered, modified, assembled, installed, or failed to maintain**
34 **the product, in a manner that caused the claimant's harm.**

35 **2. Notwithstanding the provisions of subsection 1 of this section,**
36 **a product seller otherwise immune from liability under said subsection**
37 **may be sued for harm caused by a product if the product manufacturer**
38 **is not subject to personal jurisdiction in Missouri.**

Section B. Because of the need to protect innocent product sellers from
2 liability, section A of this act is deemed necessary for the immediate preservation
3 of the public health, welfare, peace and safety, and is hereby declared to be an
4 emergency act within the meaning of the constitution, and section A of this act
5 shall be in full force and effect upon its passage and approval.

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